

REMARKS

This Amendment After Allowance Under Rule 312 is being filed in response to the Notice of Allowability mailed May 12, 2006 wherein claims 1-7, 11-15, 21, 23-26, and 28-31 were allowed by the Examiner. The Examiner's Amendment is respectfully traversed, for the reasons discussed below.

Claims 1-31 are now pending in this application. Claims 1 and 30 are independent. Previously withdrawn species claims 8-10, 16-20, 22, and 27 have been rejoined by this Amendment in accordance with the requirements of the MPEP and the Patent Rules in 37 C.F.R.. Claim 32 has been canceled.

In response to the previous Election of Species Requirement, claims 1-7, 11-15, 21, 23-26, and 28-31 were elected for continued prosecution, and claims 8-10, 16-20, 22, 27, and 32 were withdrawn as being directed to the non-elected species.

In an Examiner's Amendment provided with the Notice of Allowability mailed May 12, 2006, the Examiner canceled all previously withdrawn claims 8-9, 16-22, 27, and 32 *sua sponte*.

However, as stated by the Examiner in the original Election Requirement, upon the allowance of a generic claim, Applicant would be entitled to rejoinder of withdrawn species claims in addition to allowance of the elected species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.146.

The Examiner's actions with respect to cancellation of the non-elected species claims were clearly in error. Previously withdrawn claims 8-10, 16-20, 22, and 27 were eligible for rejoinder as they variously and ultimately depended from allowed generic claim 1.

As stated in MPEP § 821.04 ("Rejoinder"),

The propriety of a restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance, and the nonelected invention(s) should be considered for rejoinder. Rejoinder involves withdrawal of a restriction requirement between an allowable elected invention and a nonelected invention and examination of the formerly nonelected invention on the merits.

In order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim. A withdrawn claim that does not require all the limitations of an allowable claim will not be rejoined. Furthermore, where restriction was required between a product and a process of making and/or using the product, and the product invention was elected and subsequently found allowable, all claims to a nonelected process invention must depend from or otherwise require all the limitations of an allowable claim for the claims directed to that process invention to be eligible for rejoinder. See MPEP § 821.04(b). In order to retain the right to rejoinder, applicant is advised that the claims to the nonelected invention(s) should be amended during prosecution to require the limitations of the elected invention.

Accordingly, rejoinder and allowance of previously withdrawn species claims 8-10, 16-20, 22, and 27 are respectfully requested. Withdrawal of the Examiner's Amendment and passage of the Application to Issue is respectfully requested.

Applicant believes no fee is due with this Amendment After Allowance Under Rule 312. However, if any fee is due, please charge IBM Deposit Account No. 09-0456, under Order No. 21806-00083-US from which the undersigned is authorized to draw.

Respectfully submitted,

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